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House Engrossed Senate Bill

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1305

AN ACT

AMENDING SECTIONS 32-1121, 32-1123 AND 32-1158, ARIZONA REVISED STATUTES;
RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1121, Arizona Revised Statutes, is amended to
3 read:

4 32-1121. Persons not required to be licensed; penalties

5 A. This chapter shall not be construed to apply to:

6 1. An authorized representative of the United States government, this
7 state or any county, incorporated city or town, reclamation district,
8 irrigation district or other municipality or political subdivision of this
9 state.

10 2. Trustees of an express trust that is not formed for the purpose of
11 conducting business as a contractor or officers of a court, if they are
12 acting within the terms of their trust or office.

13 3. Public utilities operating under regulation of the corporation
14 commission or construction, repair or operation incidental to discovering or
15 producing petroleum or gas, or the drilling, testing, abandoning or other
16 operation of a petroleum or gas well, if performed by an owner or lessee.

17 4. Any materialman, manufacturer or retailer furnishing finished
18 products, materials or articles of merchandise who does not install or attach
19 such items or installs or attaches such items if the total value of the sales
20 contract or transaction involving such items and the cost of the installation
21 or attachment of such items to a structure does not exceed ~~seven hundred~~
22 ~~fifty~~ ONE THOUSAND FIVE HUNDRED dollars, including labor, ~~AND materials and~~
23 ~~all other items~~ FURNISHED BY THE MATERIALMAN, MANUFACTURER OR RETAILER AND
24 EXCLUDING MATERIALS AND ANY OTHER ITEMS THAT ARE OWNED OR OTHERWISE PAID FOR
25 BY ANY OTHER PERSON. THE MATERIALMAN, MANUFACTURER OR RETAILER MAY SIGN A
26 STATEMENT RELEASING THE HOMEOWNER FROM ANY MEDICAL CLAIM FOR INJURY DURING
27 THE INSTALLATION OR ATTACHMENT OF THE ITEMS. THE STATEMENT OF RELEASE DOES
28 NOT APPLY TO A HOMEOWNER WHO IS GROSSLY NEGLIGENT OR COMMITS WILLFUL, WANTON
29 OR INTENTIONAL ACTS OR OMISSIONS. THE STATEMENT OF RELEASE SHALL CONTAIN AN
30 ACKNOWLEDGEMENT BY THE HOMEOWNER THAT THE HOMEOWNER SHALL NOT BE ELIGIBLE FOR
31 PAYMENT OF DAMAGES FROM THE RESIDENTIAL CONTRACTORS' RECOVERY FUND AND THE
32 REGISTRAR SHALL PROVIDE AN ANNUAL REPORT OF THE RESIDENTIAL CONTRACTORS'
33 RECOVERY FUND UPON REQUEST THAT SHOWS THE TIMEFRAMES OF THE DISPOSING OF
34 FUNDS TO THE PERSON OR CLAIMANT PURSUANT TO SECTION 32-1132. The
35 materialman, manufacturer or retailer shall inform the purchaser that the
36 installation may also be performed by a licensed contractor whose name and
37 address the purchaser may request.

38 5. Owners of property who improve such property or who build or
39 improve structures or appurtenances on such property and who do the work
40 themselves, with their own employees or with duly licensed contractors, if
41 the structure, group of structures or appurtenances, including the
42 improvements thereto, are intended for occupancy solely by the owner and are
43 not intended for occupancy by members of the public as the owner's employees
44 or business visitors and the structures or appurtenances are not intended for
45 sale or for rent. In all actions brought under this chapter, proof of the
46 sale or rent or the offering for sale or rent of any such structure by the

1 owner-builder within one year after completion or issuance of a certificate
2 of occupancy is prima facie evidence that such project was undertaken for the
3 purpose of sale or rent. ~~As used in~~ FOR THE PURPOSES OF this paragraph,
4 "sale" or "rent" includes any arrangement by which the owner receives
5 compensation in money, provisions, chattels or labor from the occupancy or
6 the transfer of the property or the structures on the property.

7 6. Owners of property who are acting as developers and who build
8 structures or appurtenances to structures on their property for the purpose
9 of sale or rent and who contract for such a project with a general contractor
10 licensed pursuant to this chapter and owners of property who are acting as
11 developers, who improve structures or appurtenances to structures on their
12 property for the purpose of sale or rent and who contract for such a project
13 with a general contractor or specialty contractors licensed pursuant to this
14 chapter. To qualify for the exemption under this paragraph, the licensed
15 contractors' names and license numbers shall be included in all sales
16 documents.

17 7. Architects or engineers engaging in their professional practice as
18 defined in chapter 1 of this title, provided they do not engage in the
19 activity of a contractor as defined in sections 32-1101 and 32-1102.

20 8. A person licensed, certified or registered pursuant to chapter 22
21 of this title or a person working under the direct supervision of a person
22 certified or qualified pursuant to chapter 22 of this title to the extent he
23 is engaged in structural pest control.

24 9. The sale or installation of finished products, materials or
25 articles of merchandise ~~which~~ THAT are not fabricated into and THAT do not
26 become a permanent fixed part of the structure. This exemption does not
27 apply if a local building permit is required, if the total price of the
28 finished product, material or article of merchandise including labor is more
29 than ~~seven hundred fifty~~ ONE THOUSAND FIVE HUNDRED dollars or if the removal
30 of the finished product, material or article of merchandise causes damage to
31 the structure or renders the structure unfit for its intended use.

32 10. Employees of the owners of condominiums, townhouses, cooperative
33 units or apartment complexes of four units or less or the owners' management
34 agent or employees of the management agent repairing or maintaining
35 structures owned by them.

36 11. Any person who engages in the activities regulated by this chapter,
37 as an employee of an exempt property owner or as an employee with wages as
38 his sole compensation.

39 12. A surety company or companies ~~which~~ THAT are authorized to transact
40 business in this state and ~~which~~ THAT undertake to complete a contract on
41 which they issued a performance or completion bond, provided all construction
42 work is performed by duly licensed contractors.

43 13. Insurance companies ~~which~~ THAT are authorized to transact business
44 in this state and ~~which~~ THAT undertake to perform repairs resulting from
45 casualty losses pursuant to the provisions of a policy, provided all
46 construction work is performed by duly licensed contractors.

1 project with an aggregate worth of more than ~~seven hundred fifty~~ ONE THOUSAND
2 FIVE HUNDRED dollars, the registrar shall not issue the entity a license
3 pursuant to this chapter for one year after the date of the bid.

4 B. This section does not apply to an entity that bids on a contract
5 for either of the following:

6 1. A department of transportation project.

7 2. A project that is subject to the federal acquisition regulation,
8 title 48 Code of Federal Regulations, including the department of defense
9 federal acquisition regulation.

10 C. This section does not affect the licensing exemptions prescribed in
11 section 32-1121.

12 D. If an entity bids on a contract for a project pursuant to
13 subsection A of this section and the project has an aggregate worth of more
14 than ~~seven hundred fifty~~ ONE THOUSAND FIVE HUNDRED dollars and less than
15 twenty thousand dollars, the registrar shall issue the entity a written
16 warning relating to the unlicensed activity if the registrar has not
17 previously issued the entity a warning.

18 Sec. 3. Section 32-1158, Arizona Revised Statutes, is amended to read:

19 32-1158. Minimum elements of a contract

20 A. From and after December 31, 1992, any contract in an amount of more
21 than ~~seven hundred fifty~~ ONE THOUSAND FIVE HUNDRED dollars and less than one
22 hundred fifty thousand dollars entered into between a contractor and the
23 owner of a property to be improved shall contain in writing at least the
24 following information:

25 1. The name of the contractor and the contractor's business address
26 and license number.

27 2. The name and mailing address of the owner and the jobsite address
28 or legal description.

29 3. The date the parties entered into the contract.

30 4. The estimated date of completion of all work to be performed under
31 the contract.

32 5. A description of the work to be performed under the contract.

33 6. The total dollar amount to be paid to the contractor by the owner
34 for all work to be performed under the contract, including all applicable
35 taxes.

36 7. The dollar amount of any advance deposit paid or scheduled to be
37 paid to the contractor by the owner.

38 8. The dollar amount of any progress payment and the stage of
39 construction at which the contractor will be entitled to collect progress
40 payments during the course of construction under the contract.

41 B. At the time of signing a contract the owner shall be provided a
42 legible copy of all documents signed and a written and signed receipt for and
43 in the true amount of any cash paid to the contractor by the owner.

44 C. The requirements of this section shall not constitute prerequisites
45 to the formation or enforcement of a contract. Failure to comply with the
46 requirements of this section shall not constitute a defense by either party

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1 to an action for compensation, damages, breach, enforcement or other cause of
2 action based on the contract.